

K. Riback



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Rodeo Road Equipment, Inc.
File: B-242093
Date: March 7, 1991

Ward C. Lingo for the protester.
Alton E. Woods, Esq., and Justin P. Patterson, Esq., Department of the Interior, for the agency.
Katherine I. Riback, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency lost and thus failed to consider the protester's bid is denied. It is not permissible to make award to a firm whose bid may have been lost by the government prior to the bid opening date; to do so would be inconsistent with preserving the integrity of the competitive bidding system.

DECISION

Rodeo Road Equipment, Inc. protests the failure of the Bureau of Reclamation, Department of the Interior, to consider its bid under invitation for bids (IFB) No. O-SI-60-04550, for the furnishing of a hydraulic excavator machine. Rodeo Road argues that it properly addressed and delivered its bid by Express Mail but that the agency subsequently lost it and would not allow Rodeo Road to resubmit its bid after opening.

We deny the protest.

The IFB, issued on August 9, 1990, scheduled bid opening for September 10, at 2 p.m. Amendment No. 1 changed the specifications and delayed the scheduled bid opening until September 18, at 2 p.m. Four bids were received on the bid opening date. After bid opening, Rodeo Road contacted the contracting officer to obtain the bid results and was informed that no bid had been received from it, even though the agency had received the firm's signed copy of amendment No. 1. The protester alleges that the contracting officer stated that he would have to accept Rodeo Road's bid if it could prove it

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had delivered its bid in a timely manner.^{1/} The protester states that after the contracting officer told him the amount of the bids which were submitted, the protester told the contracting officer the amount of its bid, which would be the lowest. Rodeo Road produced copies of its Express Mail receipt which shows that the delivery envelope was correctly addressed as instructed by the solicitation and that the bid was received and signed for at the installation on September 7.

The agency states that when it became aware that Rodeo Road had submitted a bid that was not produced at bid opening, the contract specialist searched the mailroom, the bid cabinet and other file cabinets in the Acquisition Division. When the agency received the Express Mail receipt from Rodeo Road it identified the individual who signed for the bid and made further efforts to locate the bid to no avail. Later, the parties communicated again and Rodeo Road was told that the bid was still lost and the agency could not accept a copy of its original bid. The agency awarded the contract to Nebraska Machinery on November 16.

Rodeo Road contends that it properly fulfilled all of its responsibilities by delivering a correctly addressed bid before the bid opening date, and that the agency erred when it lost its bid. The protester also alleges that there is "a possibility of fraud" because the contracting officer refused to accept a copy of Rodeo Road's original bid even though the protester had provided proof of delivery and, in its view, had met the requirements for acceptance of a late bid set out in the solicitation.^{2/}

The agency, while acknowledging that it did in fact lose Rodeo Road's bid, argues that under our decisions it is prohibited from allowing the bidder to resubmit its bid after bid prices have been exposed. We agree.


^{1/} The agency disagrees with Rodeo Road's account of this conversation. Even assuming that Rodeo Road's version of the conversation is accurate, generally the government is not bound by the incorrect informal advice given by government contracting employees to bidders and offerors during the contracting process. Air Inc., B-238468, June 6, 1990, 69 Comp. Gen. ___, 90-1 CPD ¶ 533.

^{2/} The late bid rules would only have been applicable if Rodeo Road's bid had been discovered on the government installation before award and the other criteria regarding the method and time of delivery set out in the solicitation were met. See T & A Painting, Inc., B-233500.2, Apr. 11, 1989, 89-1 CPD ¶ 369.

We understand that the protester feels that through no fault of its own it has been deprived of a contract which should have been awarded to it. Nevertheless, where an ostensible bidder has complied with all of the requirements of a particular solicitation, but its bid has been lost after being received at the procuring activity prior to bid opening, the vendor cannot be permitted to resubmit its bid since there is no certainty that a subsequently submitted copy would in fact be identical to the original that was received and lost. Displacing an otherwise successful bidder on the basis of a bid provided after the opening date would not be consistent with maintaining the integrity of the competitive system. East West Research, Inc., B-239565; B-239566, Aug. 21, 1990, 90-2 CPD ¶ 147.

While it is unfortunate, we recognize that even with appropriate procedures in place, an agency may occasionally lose or misplace a bid or quotation. Indeed, we have taken the position that the occasional negligent loss of a bid by an agency does not entitle the supplier to any relief. Interstate Diesel Serv., Inc., B-229622, Mar. 9, 1988, 88-1 CPD ¶ 244. Where, as here, there is no evidence that the loss of a bid had anything to do with a specific intent to exclude a firm from the competition, we will not disturb the procurement. Id.

The protest is denied.


James F. Hinchman
General Counsel